

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>: CRIMINAL NO. 06-_____</b>
<b>v.</b>	<b>: DATE FILED: _____</b>
<b>MICHAEL TULIO TULIO LANDSCAPING, INC.</b>	<b>: VIOLATION:</b> <b>18 U.S.C. § 371 (conspiracy - 1 count)</b> <b>18 U.S.C. § 1341 (mail fraud - 2 counts)</b> <b>18 U.S.C. § 2 (aiding and abetting)</b>

**INDICTMENT**

**COUNT ONE**

**THE GRAND JURY CHARGES THAT:**

At all times material to this indictment:

**THE DEFENDANTS**

1. Defendant TULIO LANDSCAPING, INC. ("TLI") was a construction service business incorporated in Pennsylvania. TLI specialized in site development and landscape-contracting services.
2. Defendant MICHAEL TULIO was the president and owner of TLI.
3. Between in or about August 1999 and in or about June 2002, defendants MICHAEL TULIO and TLI obtained two construction contracts from the Southeastern Pennsylvania Transportation Authority ("SEPTA"), totaling approximately \$418,000, which required that the defendants comply with the conditions of SEPTA's Disadvantaged Business Enterprise ("DBE") Program.

## **SEPTA’S DBE PROGRAM**

4. In or about 1980, the United States Department of Transportation (“USDOT”) issued regulations in connection with a program to increase the participation of minority and disadvantaged business enterprises (“DBEs”) in federally-funded public construction contracts (the “DBE Program”). The USDOT delegated the administration of the DBE Program to the city and state agencies that received USDOT construction grant funds.

5. The Federal Transit Administration (“FTA”) is an agency within the USDOT that provided financial assistance in the form of construction grants to transit agencies for the construction and maintenance of transit systems. The FTA required recipients of USDOT construction grants to establish a DBE program, pursuant to which they would set specific goals for the percentage of work to be awarded to DBEs, and ensure that good faith efforts were made by general contractors to employ qualified DBE subcontractors.

6. SEPTA received USDOT construction grants through the FTA, and established a DBE Program.

7. As part of its DBE Program, SEPTA required general contractors to count toward the attainment of their DBE percentage goals only those funds paid to legitimate DBE companies that performed a “commercially useful function” in the execution of a contract.

8. Under the SEPTA-DBE Program, and in accordance with USDOT regulations, a DBE company performed a “commercially useful function” when it: (a) was responsible for the execution of a distinct element of the work of a contract; (b) carried out its responsibilities by actually performing, managing and supervising the work involved; and (c) furnished all supervision, labor, tools, equipment, materials and supplies necessary to perform that distinct element of the work of the contract.

9. In order to participate in SEPTA's DBE Program, a company had to be certified as a DBE by SEPTA.

10. In order for a company to be certified as a DBE by SEPTA, it had to demonstrate that: (a) at least 51 percent of the company was owned and controlled by one or more minorities, women, or socially and economically disadvantaged individuals; (b) those individuals controlled the management and daily business operations of the company; and (c) the company had sufficient resources and employees to fulfill subcontracts.

11. Pursuant to SEPTA's DBE Program and USDOT regulations, a DBE was prohibited from subcontracting work it was awarded in connection with its DBE status, and was required to, among other things: (a) perform the subcontracting work with its own employees and furnish to the contracting governmental agency a certified payroll showing the wages paid to each employee on the job; (b) manage its own work, including supervising, hiring and firing of employees, and perform all administrative functions using personnel responsible to or employed by the DBE at facilities or locations under the control of the DBE; and (c) negotiate prices, arrange delivery of, and pay for, materials required for the subcontracting work.

12. Subcontractor EP ("Sub EP") was a minority-owned construction service business located in Philadelphia, Pennsylvania. Sub EP specialized in excavating and hauling services, and was certified by SEPTA as a DBE.

### **THE CONSPIRACY**

13. From on or about August 23, 1999 through on or about May 13, 2002, in the Eastern District of Pennsylvania and elsewhere, defendants

**MICHAEL TULIO and  
TULIO LANDSCAPING, INC.**

conspired and agreed, together and with other persons known to the grand jury, to knowingly and intentionally commit mail fraud, in violation of Title 18, United States Code, Section 1341.

### **THE MANNER AND MEANS OF THE CONSPIRACY**

It was part of the conspiracy that:

14. Defendants MICHAEL TULIO and TLI obtained construction contracts from SEPTA, totaling approximately \$418,000, by falsely reporting to SEPTA that defendants would comply with SEPTA's DBE contract requirements.

15. Defendants MICHAEL TULIO and TLI agreed to pay DBE Sub EP to use that company's name in certifying falsely to SEPTA that Sub EP would perform the requisite DBE subcontract work. In return, the defendants agreed to pay Sub EP a fee for the use of its name.

16. Defendants MICHAEL TULIO and TLI performed the required DBE work using their own employees.

17. Defendants MICHAEL TULIO and TLI created and submitted to SEPTA false reports, certifications, checks, invoices, and correspondence to misrepresent to SEPTA that they were in compliance with the contract DBE requirements.

18. Defendants MICHAEL TULIO and TLI enriched themselves through their scheme to defraud SEPTA's DBE Program.

### **OVERT ACTS**

In furtherance of the conspiracy, the following overt acts, among others, were committed in the Eastern District of Pennsylvania and elsewhere:

1. In or about August 1999, defendant MICHAEL TULIO met with Sub EP and obtained Sub EP's approval to use its name in representations to SEPTA that Sub EP would perform the required DBE subcontracting work for defendants MICHAEL TULIO and TLI.

2. In or about August 1999, defendants MICHAEL TULIO and TLI agreed with Sub EP that they would pay Sub EP a fee to falsely appear to SEPTA as the DBE subcontractor for TLI.

3. Between in or about September and in or about November 1999, defendants MICHAEL TULIO and TLI used their own employees to perform the required DBE work.

4. In or about November 1999, defendants MICHAEL TULIO and TLI paid Sub EP approximately \$3,500 in return for Sub EP providing a phony invoice in the amount of \$39,780 for DBE work on SEPTA purchase order S639921.

5. On or about December 20, 1999, defendants MICHAEL TULIO and TLI provided to SEPTA a DBE Invoice Payment Report, an altered National Penn Bank check number 6097, and the phony invoice from Sub EP to SEPTA that fraudulently reported payment for DBE services to Sub EP of \$39,780.

6. On or about June 25, 2001, defendants MICHAEL TULIO and TLI obtained a contract from SEPTA, in the amount of \$188,100, for the SEPTA R5 Doylestown Line Culvert Replacement Project-Phase II, purchase order number S668166, listing Sub EP as their DBE subcontractor.

7. On or about November 7, 2001, defendants MICHAEL TULIO and TLI sent to SEPTA by United States mail a DBE Invoice Payment Report, a DBE Utilization Report, an altered National Penn Bank check number 11886, and a phony invoice from Sub EP to SEPTA that fraudulently reported a payment for DBE services to Sub EP of \$28,215.

8. On or about May 13, 2002, defendants MICHAEL TULIO and TLI sent to SEPTA by United States mail a DBE Invoice Payment Report, a DBE Utilization Report, an altered National Penn Bank check number 11886, and a phony invoice from Sub EP to SEPTA that fraudulently reported a payment for DBE services to Sub EP of \$28,215.

All in violation of Title 18, United States Code, Section 371.

## **COUNTS TWO AND THREE**

### **THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs one through 12 and 14 through 18 of Count One are realleged.

At all times material to these counts of the indictment:

2. On or about June 25, 2001, SEPTA awarded a contract in the amount of \$188,100 to defendants MICHAEL TULIO and TLI for the SEPTA R5 Doylestown Line Culvert Replacement Project-Phase II, purchase order number S668166.

### **THE SCHEME**

3. From on or about August 23, 1999 through on or about May 13, 2002, in the Eastern District of Pennsylvania and elsewhere, defendants

**MICHAEL TULIO and  
TULIO LANDSCAPING, INC.**

devised and intended to devise a scheme to defraud SEPTA, and to obtain money and property from SEPTA by means of false and fraudulent pretenses, representations and promises.

### **OBJECT OF THE SCHEME**

4. It was the purpose of the scheme for defendants MICHAEL TULIO and TLI to obtain construction contracts and money from SEPTA by falsely reporting to SEPTA that they were in compliance with SEPTA's DBE requirements and were using an approved DBE subcontractor to perform work on the contract.

### **MANNER AND MEANS**

It was part of the scheme that:

5. Defendants MICHAEL TULIO and TLI agreed to pay DBE Sub EP a fee to use the DBE's name in false representations to SEPTA that Sub EP would perform the required DBE subcontracting work.

6. Defendants MICHAEL TULIO and TLI used TLI employees to perform the required DBE subcontracting work.

7. Defendants MICHAEL TULIO and TLI created and then submitted to SEPTA false reports, certifications, correspondence, invoices, and checks to represent to SEPTA that they were in compliance with SEPTA contract DBE requirements.

8. On or about each of the dates set forth below, in the Eastern District of Pennsylvania, defendants

**MICHAEL TULIO and  
TULIO LANDSCAPING, INC.,**

for the purpose of executing the scheme described above and attempting to do so, knowingly caused to be delivered by the United States Mail a DBE Invoice Payment Report, a DBE Utilization Report, an altered National Penn Bank check number 11886, and a phony invoice from Sub EP to SEPTA that fraudulently indicated a



payment for DBE services to Sub EP of \$28,215, each mailing being a separate count:

<u>Count</u>	<u>Approximate Date of Mailing</u>
Two	November 7, 2001
Three	May 13, 2002.

All in violation of Title 18, United States Code, Sections 1341 and 2.

**A TRUE BILL:**

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**GRAND JURY FOREPERSON**

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**PATRICK L. MEEHAN**  
**UNITED STATES ATTORNEY**